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Honorable Barbara Rothstein

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OFFICE OF THE CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
and,
STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,
Plaintiff in Intervention,
v.
MARINE POWER AND EQUIPMENT
COMPANY, INC., and WFI INDUSTRIES,
INC.,
Defendants.

No. C85-382R

STIPULATION FOR
MODIFICATION AND
TERMINATION OF
CONSENT DECREE AND
ORDER

COME NOW plaintiffs UNITED STATES OF AMERICA on behalf of
the Environmental Protection Agency ("EPA") and the STATE OF
WASHINGTON, DEPARTMENT OF ECOLOGY, ("Ecology"), defendant UNITED
MARINE SHIPBUILDING, INC., successor in interest to Marine Power
and Equipment Company, Inc. and WFI Industries, Inc., through and
by Michael B. McCarty, Trustee for United Marine Shipbuilding,
Inc. and NORTHLAKE SHIPYARD, INC., purchaser of certain assets
previously owned by the defendants, (collectively "the Parties")
by and through their undersigned attorneys, and move for
modification and termination of the Consent Decree entered

1 January 28, 1988. This motion is supported by the following
2 stipulated facts:

3 1. On March 8, 1985, the United States, and Ecology by
4 intervention, filed a complaint in federal district court,
5 alleging civil claims for violations of the Clean Water Act, 33
6 U.S.C. § 1311, and the Refuse Act, 33 U.S.C. § 407 ("Complaint")
7 against MARINE POWER AND EQUIPMENT, INC. and WFI INDUSTRIES,
8 INC., United States and State of Washington v. Marine Power and
9 Equipment Company, Inc., No. C85-382R.

10 2. On January 28, 1988, the United States, Ecology and
11 Defendants resolved the matters alleged in the Complaint by entry
12 into a consent decree ("Consent Decree") which imposed
13 obligations on Defendants and on their successors in interest for
14 removal and disposal of spent sand blasting debris and other
15 pollutants resulting from Defendants' operations of a ship
16 painting and repair facility, located at 1441 Northlake Avenue,
17 Seattle, Washington, on the north shore of Lake Union
18 ("facility"). Pursuant to the Consent Decree, a copy of the
19 requirements of the Consent Decree is recorded as part of the
20 deed for the facility.

21 3. At the time of entry of the Consent Decree, Defendants
22 had petitioned the United States Bankruptcy Court, Western
23 District of Washington, for protection under Chapter 11 of the
24 United States Bankruptcy Code, 11 U.S.C. §§ 1101 et seq., Case
25 No. 86-1091. Pursuant to a reorganization plan adopted in that
26 bankruptcy proceeding, United Marine Shipbuilding, Inc. ("United

Marine") became the reorganized successor in interest to Defendants and the owner of the facility. Defendants had not fulfilled the obligations of the Consent Decree prior to the reorganization in bankruptcy.

4. On January 21, 1994, United Marine filed a petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 1101 et seq., in the United States Bankruptcy Court, Western District of Washington, Case No. 94-00542. As of that date, United Marine had not fulfilled the obligations of the Consent Decree and does not have sufficient unencumbered assets to do so. On March 21, 1994, Michael B. McCarty was appointed Trustee in Bankruptcy for United Marine.

5. Northlake has entered into an asset purchase agreement for the purchase of the facility from the United Marine estate in bankruptcy, which purchase would cause Northlake to become the owner of the facility and successor in interest to Defendants for purposes of the obligations imposed by the Consent Decree.

6. Northlake has entered into a prospective purchaser agreement with Ecology under the Washington State Model Toxics Control Act ("MTCA"), which requires it to make a cash payment of \$400,000 to fund cleanup of the contamination resulting from Defendants' operations of the facility, and to deposit a percentage of future profits anticipated to total \$1.1. million (adjusted for inflation) into a fund dedicated to cleanup of the contamination for a period of up to 15 years, or to complete the cleanup required by the Consent Decree. The prospective

1 purchaser agreement was subject to a thirty (30) day public
2 comment period. The prospective purchaser agreement will be
3 filed as a consent decree in the State of Washington Superior
4 Court for King County. The prospective purchaser agreement is
5 attached hereto.

6 7. Pursuant to the prospective purchaser agreement,
7 Northlake will deposit \$400,000 into an escrow account
8 established in connection with the purchase of the property. The
9 \$400,000 will be credited to the escrow account at closing.


10 8. In consideration of Northlake's agreement to fund the
11 cleanup under the terms of the prospective purchaser agreement,
12 Ecology has covenanted not to sue Northlake under MTCA for the
13 present contamination at the facility or for contamination
14 resulting from the operations of the facility by Northlake's
15 predecessors.

16 9. Entry by Northlake into the prospective purchaser
17 agreement with Ecology shall be deemed to discharge the
18 obligations of Northlake under the Consent Decree.

19 THEREFORE, in consideration of Northlake's entry into the
20 prospective purchaser agreement, which agreement has been entered
21 as a consent decree by the State of Washington Superior Court for
22 King County, the parties hereby move this court for modification
23 of paragraph X ("Termination") of the Consent Decree, to read
24 "[t]he provisions of this Consent Decree shall cease when
25 Northlake enters into, and the State of Washington Superior Court
26 approves by final order, a prospective purchaser agreement with

1 Ecology under the Washington State Model Toxics Control Act
2 setting forth the funding for removal and disposal activities
3 required by Paragraph IV". The parties move additionally for
4 termination of the consent decree in accordance with the
5 stipulated facts recited in this motion.

6 PRESTON THORGRIMSON SHIDLER
7 GATES & ELLIS

8 By 
9 Ross A. Macfarlane WSBA #14863
Jennifer L. Belk WSBA #21913


10 Attorneys for
11 NORTHLAKE SHIPYARD, INC.

12 FORSH & MCCARTY

13
14 By 
Michael B. McCarty

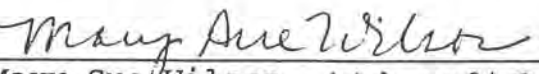
15 Trustee in Bankruptcy for Defendant
16 UNITED MARINE SHIPBUILDING, INC.

17 UNITED STATES DEPARTMENT OF JUSTICE

18
19 By 
20 Rachel Jacobson
Alan Tenenbaum

21 Attorneys for Plaintiff
22 UNITED STATES OF AMERICA

23 WASHINGTON ATTORNEY GENERAL'S OFFICE

24 By 
25 Mary Sue Wilson AAG WST Bar #19257

26 Attorney for Plaintiff
27 WASHINGTON STATE DEPARTMENT OF ECOLOGY

28 STIPULATION FOR MODIFICATION - Page 5
AND TERMINATION OF CONSENT DECREE AND ORDER

1
2 ORDER

3 THIS MATTER having come on before the undersigned on the
4 foregoing motion of counsel, and the Court being fully advised on
5 this matter; now, therefore, it is hereby

6 ORDERED, ADJUDGED AND DECREED that the Consent Decree
7 entered January 28, 1988, is hereby modified and terminated in
8 accordance with the attached agreement of the moving parties and
9 that plaintiffs' claims alleged under the Clean Water Act and the
10 Refuse Act, in the Complaint filed March 8, 1985, against Marine
11 Power and Equipment Company and WFI Industries, Inc., are hereby
12 dismissed with prejudice and without cost to either party.

13
14 DONE IN OPEN COURT this 22nd day of August, 1994.

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16 
17 UNITED STATES DISTRICT JUDGE
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EX PARTE DEPARTMENT

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

STATE OF WASHINGTON DEPARTMENT
OF ECOLOGY,

Plaintiff.

v.

NORTHLAKE SHIPYARD, INC..

Defendant.

No.

94-2 20115 8

PROSPECTIVE PURCHASER
CONSENT DECREE RE:
NORTHLAKE SHIPYARD, INC.

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PROSPECTIVE PURCHASER
CONSENT DECREE RE:
NORTHLAKE SHIPYARD, INC. - 1

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PROSPECTIVE PURCHASER
 CONSENT DECREE RE:
 NORTHLAKE SHIPYARD, INC. - 2

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3. WHEREAS, aquatic sediments in Lake Union generally are contaminated and similar contamination has been found in aquatic sediments on the Property. In addition to the general sediment contamination at and near the Property, it has been alleged that the former Property owners, Marine Power & Equipment Company and WFI Industries ("Marine Power"), discharged contamination onto the bed of Lake Union in violation of state and federal clean water laws. The allegations were resolved in a consent decree entered January, 1988 (the "CWA Decree") between Marine Power, the U.S. Environmental Protection Agency ("EPA") and Ecology.

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1 4. WHEREAS, in consideration of the mutual promises and covenants herein, EPA,
2 Ecology and Northlake propose to enter an agreement seeking modification and termination of the
3 CWA Decree (the "Modification and Termination Agreement") .

4 5. WHEREAS, the current owner of the Property, United Marine, filed for Chapter 11
5 bankruptcy protection on January 21, 1994 in the United States Bankruptcy Court for the Western
6 District of Washington at Seattle. United Marine is therefore unable to perform its obligations under
7 the CWA Decree or to make financial contributions toward cleanup of aquatic sediment
8 contamination at and near the Property and generally throughout the bed of Lake Union. The
9 bankruptcy trustee shut down United Marine's operations at the facility and then entered into an
10 interim lease with Tippet Marine Services to operate the facility before the Property is sold.

11 6. WHEREAS, Northlake has entered into, and the Bankruptcy Court has approved, an
12 asset purchase agreement with the estate of United Marine that would allow Northlake to continue
13 shipyard operations at the Property. The asset purchase agreement is expressly contingent upon
14 Northlake's obtaining a release of certain environmental liabilities under the Clean Water Act and
15 MTCA.

16 7. WHEREAS, the Washington State Department of Natural Resources ("DNR") owns
17 submerged property, some of which is or has been leased to or occupied by United Marine for its
18 shipyard operations. Some of this DNR property was allegedly contaminated by prior shipyard
19 activities at the facility.

20 8. WHEREAS, this Decree promotes the public interest by expediting cleanup activities
21 at and near the Property, and Ecology has determined that a public benefit will be provided by the
22 continuation of a shipyard or other similar industrial water-dependent use at the Property.

23 9. WHEREAS, Northlake has offered to further certain Ecology goals as provided in this
24 Decree, in exchange for a covenant not to sue and protection from contribution under MTCA.
25 Among other things, Northlake will make a substantial cash payment to a trust fund established for
26 the cleanup of the contamination caused by past shipbuilding and repair operations at the Property

PROSPECTIVE PURCHASER
CONSENT DECREE RE:
NORTHLAKE SHIPYARD, INC. - 4

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1 (the "Trust Fund") and will allocate a percentage of its profits over a period of up to fifteen years to
2 the Trust Fund, according to the terms of this Decree.

3 10. WHEREAS, Northlake will operate the shipyard under the terms of NPDES Permit
4 WA-003086-4 and all applicable environmental laws.

5 11. WHEREAS, the Court is fully advised of the reasons for entry of this Decree, and
6 good cause having been shown:

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

8 I. AUTHORITY, JURISDICTION AND VENUE

9 12. This Court has authority, under Washington's Uniform Declaratory Judgment Act
10 (RCW 7.24 et seq.) to resolve the liability of the parties to this Decree.

11 13. This Court has jurisdiction over the subject matter and over the parties pursuant to
12 MTCA. (RCW 70.105D.) Venue is proper in King County pursuant to RCW 70.105D.050(5)(b).

13 14. Authority is conferred upon the Washington State Attorney General by RCW
14 70.105D.040(4)(a) to agree to a settlement with any potentially liable person ("PLP") if, after public
15 notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious cleanup
16 of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(d).
17 RCW 70.105D.040(4)(b) requires that such a settlement be entered as a consent decree issued by a
18 court of competent jurisdiction.

19 15. Ecology has determined that past activities at or near the Property have given rise to
20 releases of hazardous substances. Ecology has not made a determination that Northlake is a
21 potentially liable person for the Property. Were Northlake to acquire an interest in the Property,
22 however, it could be a PLP as an owner or operator under RCW 70.105D.040(1)(a). In addition,
23 hazardous substance contamination is known to exist off-site. If such contamination were to migrate
24 onto the Property in the future, Northlake or its Successors in Interest and Assigns could be a PLP as
25 an owner or operator under RCW 70.105D.040(1)(a). This Decree is entered prior to Northlake's
26 purchase of the Property to resolve its potential liability for Present Contamination and known off-site

1 contamination if and when that contamination migrates onto the Property, and to facilitate a more
2 expeditious cleanup at the Property than otherwise would occur.

3 16. By entering into this Decree, Northlake agrees not to challenge Ecology's jurisdiction
4 in any proceeding to enforce this Decree. Northlake consents to the issuance of this Decree and has
5 agreed to make payments as specified in this Decree.

6 II. DEFINITIONS

7 17. Unless otherwise expressly provided herein, terms used in this Decree that are defined
8 in MTCA or in regulations promulgated under MTCA shall have the meaning assigned to them in
9 MTCA or in such regulations. Whenever terms listed below are used in this Decree or in the
10 attachments hereto, the following definitions shall apply:

11 "Adjusted for inflation" shall mean the value of 1994 dollars adjusted by the percentage
12 change, if any, in the CPI (as defined below) during the period since the initial obligation until the
13 most recently published CPI adjustment prior to the date for which the determination is being made.
14 The period of the adjustment shall be the most recently published prior year for which the
15 determination is being made. If the Bureau of Labor Statistics ceases to use the 1982-84 average as
16 the basis of calculation, or the CPI is discontinued, the parties shall mutually agree on a substitute
17 index of comparable statistics on inflation, as shall be computed by an agency of the United States or
18 by a responsible financial periodical of recognized authority.

19 "Consent Decree" or "Decree" shall mean this Decree and all attachments hereto. In the event
20 of conflict between this Decree and any attachment, this Decree shall control.

21 "CPI" shall mean the monthly Consumer Price Index for all Urban Consumers, United States
22 Average for all Urban Consumers, United States Average for all Items (1982-84 = 100) published by
23 the Bureau of Labor Statistics. United States Department of Labor Statistics, United States
24 Department of Labor.

25 "CWA Decree" shall mean the Consent Decree entered between Marine Power, EPA, and
26 Ecology dated January 28, 1988.

PROSPECTIVE PURCHASER
CONSENT DECREE RE:
NORTHLAKE SHIPYARD, INC. - 6

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1 "The Modification and Termination Agreement" shall mean the agreement proposed between
2 EPA, Ecology, the bankruptcy trustee, and Northlake, whereby the cleanup obligations under the
3 CWA Decree will be terminated.

4 "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral.

5 "Payment Obligation" shall mean the obligation of Northlake or its Successors in Interest and
6 Assigns to make certain payments or perform cleanup pursuant to Section VII as provided in
7 Section V or modified pursuant to Section XII.

8 "Present Contamination" shall mean any contamination by any hazardous substances,
9 pollutants, or contaminants on the Property existing as of the effective date of this Decree and any
10 contamination on or off the Property caused by prior shipyard operations at the Property or other past
11 activities at the Property.

12 "The Property" shall mean the property which is or has been owned, leased or occupied by
13 United Marine or Northlake. The property to be owned or leased by Northlake is depicted on
14 Attachment B and legally described in Attachment A, attached hereto and incorporated by reference.

15 "Section" shall mean a portion of this Decree identified by a Roman numeral and including one
16 or more Paragraphs.

17 "Successors in Interest and Assigns" shall mean any party who acquires an interest in the
18 Property through purchase, lease, transfer, assignment, or otherwise.

19 III. DESCRIPTION OF SITE AND CONTAMINATION PROBLEMS

20 18. The Property is situated on the north shore of Lake Union at 1441 N. Northlake Way.
21 Ship building and repair have been conducted on the Property from the 1950s until the present.
22 These operations involved hull painting and repairs including sandblasting. During the time that
23 Marine Power operated the facility, it allegedly discharged sandblast grit and other contaminants onto
24 the bed of Lake Union in violation of state and federal clean water law. The allegations were
25 resolved in the CWA Decree entered by Marine Power, EPA, and Ecology.
26

1 19. The Property until recently was used as a shipbuilding and ship repair facility by
2 United Marine, who is the successor to Marine Power. The operations were conducted under a
3 federally issued NPDES permit for discharge into Lake Union.

4 20. Discharges from shipbuilding and repair operations at the Property have included
5 PCBs, PAHs, oils, metals, chlorinated and non-chlorinated solvents, pesticides, organo-tin, and soft-
6 bottom copper paints.

7 21. In addition to the contamination caused by past shipbuilding and repair operations at
8 the Property, aquatic sediments in Lake Union are generally contaminated and similar contamination
9 has been found in aquatic sediments on the Property. A list of environmental reports and studies that
10 contain information regarding aquatic sediment contamination at the Property and in Lake Union or
11 sources of such contamination in general is provided in Attachment F to this Decree. Reference to
12 and incorporation of this list does not constitute a statement regarding the validity, accuracy, or
13 completeness of any of the data contained in such reports or studies.

14 IV. DESCRIPTION OF PROPOSED PROJECT

15 22. Northlake is a Washington corporation. Northlake proposes to purchase the Property
16 and to continue operation of a shipbuilding and repair company, which until recently employed 50-
17 100 individuals in a working waterfront enterprise along the shores of Lake Union. United Marine,
18 the current owner of the Property, filed for bankruptcy on January 21, 1994. The bankruptcy trustee
19 appointed for United Marine shut down United Marine's operations at the facility and has entered into
20 an interim lease with Tippet Marine Services to operate the facility before the sale is closed.
21 Northlake has entered into, and the Bankruptcy Court approved, an agreement for the sale of the
22 assets of United Marine free and clear of all liens. The business has been operated under a federally
23 issued NPDES permit for discharge into Lake Union. Northlake shall operate in compliance with the
24 NPDES permit and all other environmental laws. Northlake shall also obtain and comply with all
25 terms of DNR lease(s) or use agreement(s) for all DNR property to be occupied.

1 23. Ecology has determined that a full cleanup of sandblast grit and other co-mingled
2 contamination alleged to have been caused by past shipyard operations at the Property is required.
3 Ecology has estimated that the cost of (1) cleanup of the sandblast grit and other co-mingled
4 contaminants, (2) post-cleanup evaluation, and (3) agency oversight costs will total \$1,100,000.00.
5 United Marine's Bankruptcy estate has no assets to pay for the cleanup.

6 24. Northlake has agreed to pay \$400,000.00 into the Trust Fund described in Section V
7 and Attachment D to this Decree and to contribute fifteen percent (15%) of its profits to the Trust
8 Fund for a period of up to fifteen (15) years, pursuant to Section V below. Based on current
9 projections for the proposed Northlake shipyard, it is anticipated that the profit sharing together with
10 Northlake's initial lump sum payment into the Trust Fund will be sufficient to fully fund cleanup of the
11 sandblast grit and other co-mingled contaminants, post-cleanup evaluation and agency oversight
12 costs.

13 25. The cash payment and profit sharing payments into the Trust Fund will lead to a more
14 expeditious cleanup of hazardous substances at the Property and will promote protection of the public
15 health and the environment.

16 26. Northlake shall continue a shipyard or similar industrial water-dependent use at the
17 Property until such time as the zoning is changed to permit other uses or such use is no longer viable,
18 reasonable or practicable, based upon factors including changes in the economics of shipyard
19 operations or Northlake's ability to make a profit. Provided, however, that any such restriction on the
20 use of the Property shall expire at such time as Northlake's profit sharing obligation has been satisfied
21 as provided in Paragraph 30 of this Decree.

22 V. CASH CONTRIBUTION AND PROFIT SHARING CONTRIBUTIONS

23 27. This Decree requires establishment and payment of funds into the Trust Fund
24 established by agreement (the "Trust Agreement") attached hereto as Attachment D.

25 28. The purpose of the Trust Fund is to accumulate the funds necessary to clean up the
26 sandblast grit and other co-mingled contaminants on the bed of Lake Union discharged by prior

1 operations at the Property, conduct post-cleanup evaluation, and pay agency oversight costs.
2 Ecology estimates that such costs will total \$1,100,000.00. The parties hereto anticipate that the cash
3 contribution and profit-sharing mechanism herein established together with interest accrued on such
4 funds will accumulate a total contribution of \$1,100,000.00 adjusted for inflation (as defined in
5 Paragraph 17) within fifteen years from the date of the execution of this Decree.

6 29. Pursuant to this Decree, Northlake shall pay an amount of Four Hundred Thousand
7 and No/100 Dollars (\$400,000.00) into the escrow account established in connection with its
8 purchase of the Property. The funds shall be credited to the Trust Fund upon the closing of
9 Northlake's purchase of the Property.

10 30. After a two-year grace period, Northlake will deposit 15% of its profits from the
11 operation of the facility on the Property into the Trust Fund. Profits will be calculated and payments
12 will be made pursuant to a method described in Attachment C to this Decree. Profit sharing will
13 continue until one of the following has occurred: (a) the final profit sharing installment is paid
14 consistent with Attachment C (the final installment is due by August 31, 2009); (b) Northlake or its
15 Successors in Interest and Assigns have made a total contribution, including accrued interest, of
16 \$1,100,000.00 adjusted for inflation (as defined in Paragraph 17) or (c) the sandblast grit has been
17 cleaned up pursuant to Section VII below. Northlake or its Successors in Interest and Assigns may at
18 any time prepay in full or in part their financial obligations ("Payment Obligation") under this Decree.

19 VI. DISBURSEMENT OF TRUST FUND

20 31. The Trust Fund established by this Decree shall be used for the cleanup of sandblast
21 grit and other co-mingled contaminants discharged by past operations at the Property. It may be used
22 to fund an Ecology-initiated cleanup, or, if Ecology has not initiated cleanup, an Ecology-approved
23 cleanup by Northlake or its Successors in Interest and Assigns pursuant to Section VII and
24 Attachment G of this Decree.

25 32. In addition to funding actual cleanup, the Trust Fund may be used to cover Ecology's
26 oversight costs as described in Section VIII and the costs of a post-cleanup evaluation.

1 33. Disbursements from the Trust Fund shall be made pursuant to the terms of the Trust
2 Agreement set forth in Attachment D, which provides that the Trustee shall disburse funds when and
3 as directed by Ecology's project coordinator in writing.

4 34. In the event Northlake or its Successors in Interest and Assigns elects to perform
5 cleanup at the site pursuant to Section VII, the Ecology project coordinator shall, upon written
6 request, within ninety (90) days direct the Trustee to reimburse Northlake or its Successors in Interest
7 and Assigns for expenses incurred or to be incurred pursuant to the workplan under this Decree,
8 except that Ecology shall be entitled to withhold sufficient funds to cover its oversight and other
9 recoverable costs as provided in Section VIII before Ecology is required to direct any reimbursement
10 be made to Northlake or its Successors in Interest and Assigns.

11 35. Pursuant to the terms of the Trust Agreement, which is set forth in Attachment D,
12 funds in the Trust Fund may be used to pay compensation to the Trustee, taxes, brokerage
13 commissions, and other reasonable administrative expenses of the Trust Fund.

14 VII. CLEANUP OF SANDBLAST GRIT AND OTHER CONTAMINANTS

15 36. The parties understand that Ecology may, at any time, provide for cleanup of the
16 sandblast grit and other co-mingled contaminants discharged by past shipyard activities at the
17 Property. If Ecology has not yet initiated such cleanup, then Northlake or its Successors in Interest
18 and Assigns may, at any time, conduct the cleanup, subject to Ecology approval, in order to satisfy its
19 Payment Obligation under this Decree. To do so, Northlake or its Successors in Interest and Assigns
20 may use their own funds, along with the funds contributed to the Trust Fund, and any accrued
21 interest, to perform Ecology-approved and supervised cleanup activities at the Property. Sufficient
22 funds will be allocated from the Trust Fund to cover the costs of a post-cleanup evaluation and
23 oversight costs provided for in Section VIII below.

24 37. Before undertaking any cleanup at the Property, Ecology shall inform Northlake or its
25 Successors in Interest and Assigns in writing of its intention to provide for cleanup. Upon receiving
26 notification that Ecology intends to undertake any cleanup activities Northlake or its Successors in

1 Interest and Assigns may notify Ecology that it desires to perform an Ecology-approved cleanup as
2 provided in this Section. A decision by Ecology not to allow Northlake or its Successors in Interest
3 and Assigns to perform such cleanup may be made only with good cause. Such decision shall be final
4 and not subject to dispute resolution.

5 38. Cleanup activities described and referenced in this section shall be conducted in
6 accordance with MTCA and the Sediment Management Standards set forth in Ch. 173-204 WAC.
7 Performance of cleanup activities shall be as provided in Attachment G to this Decree. The parties
8 contemplate that this Decree will be modified to incorporate a specific workplan, schedule, and
9 performance standards if Northlake or its Successors in Interest and Assigns elect to conduct
10 Ecology-approved cleanup under this Paragraph. At the time either party elects to initiate cleanup
11 activities at the Property, such party shall provide DNR written notice of its intention. Until cleanup
12 activities are provided for by amendment to this Decree, Northlake and its Successors in Interest and
13 Assigns shall comply with procedural and substantive requirements of all applicable laws. At the time
14 cleanup activities are initiated, modifications to this Decree shall provide for compliance with all
15 applicable substantive requirements governed by 1994 Washington Laws Chapter 257, Secs. 14-20.

16 VIII. ECOLOGY COSTS

17 39. This Decree contemplates that Ecology will incur costs in two ways: (1) by directly
18 providing for remedial activity at the site and/or (2) by assuming an oversight role of remedial activity
19 in the event that Northlake or its Successors in Interest and Assigns elect to conduct the cleanup
20 pursuant to Section VII and Attachment G. Ecology is entitled to be reimbursed for such costs.
21 These costs shall include work performed by Ecology or its contractors for, or on, the Property under
22 Ch. 70.105D RCW both prior to and subsequent to the issuance of this Decree for investigations,
23 remedial actions, and Decree preparation, negotiations, oversight and administration. Ecology costs
24 shall include costs of direct activities and support costs of direct activities as defined in
25 WAC 173-340-550(2).

1 40. In the event Northlake or its Successors in Interest and Assigns elects to conduct the
2 cleanup pursuant to Section VII and Attachment G, Ecology may request payment of its oversight
3 costs from the Trust Fund pursuant to Section VI. In the event Ecology incurs costs by directly
4 providing for remedial action at the site, Ecology may reimburse itself for such costs consistent with
5 this Section and pursuant to Section VI. In no event shall Northlake or its Successors in Interest and
6 Assigns be required to pay more than a total of \$1,100,000, adjusted for inflation, and including
7 accrued interest, for costs incurred for cleanup, oversight costs, and post-cleanup evaluation.

8 41. In the event Ecology requests reimbursement from the Trust Fund for oversight or
9 response costs pursuant to Sections VI and VII, Ecology shall provide Northlake or its Successors in
10 Interest and Assigns an itemized statement of costs that includes a summary of costs incurred, an
11 identification of involved staff, and the amount of time spent by involved staff members on the
12 project. Ecology agrees upon request to provide to Northlake or its Successors in Interest and
13 Assigns a general statement of work performed. Ecology shall prepare itemized statements of its
14 oversight costs quarterly.

15 42. In the event that any party disputes expenditures or the adequacy of documentation for
16 which Trust Fund reimbursement is sought, the parties agree to be bound by the dispute resolution
17 process set forth in Section XIV; provided, however, that a request for dispute resolution shall not
18 delay any reimbursement to Ecology from the Trust Fund.

19 IX. DESIGNATED PROJECT COORDINATORS

20 43. The project coordinator for Ecology is:

21 Dan Cargill
22 Site Manager
23 Department of Ecology
24 Northwest Regional Office
25 3190 - 160th Avenue S.E.
26 Bellevue, Washington 98008-5452
 (206) 649-7023
 (206) 649-7098 (fax)

1 The project coordinator for Northlake is:

2 E. Peter Kelly
3 President
4 Northlake Shipyard, Inc.
2602 - 39th West
Seattle, Washington 98199

5 44. Each project coordinator shall be responsible for overseeing the implementation of this
6 Decree. The Ecology project coordinator will be Ecology's designated representative at the Property.
7 To the maximum extent possible, communications between Ecology and Northlake or its Successors
8 in Interest and Assigns and all documents, including reports, approvals, and other correspondence
9 concerning the activities performed pursuant to the terms and conditions of this Decree, shall be
10 directed through the project coordinators. The project coordinators may designate, in writing,
11 working-level staff contacts for all or portions of the implementation of the work plan to be
12 incorporated as part of this Decree pursuant to Section VII. The project coordinators may agree to
13 minor modifications to the work to be performed without formal amendments to this Decree. Minor
14 modifications will be documented in writing by Ecology.

15 45. Any party may change its respective project coordinator. Written notification shall be
16 given to the other party at least ten (10) calendar days prior to the change.

17 X. CERTIFICATION OF NORTHLAKE

18 46. Northlake certifies that to the best of its knowledge and belief it has fully and
19 accurately disclosed to Ecology the information currently in its possession or control that relates to
20 the environmental conditions at and in the vicinity of the Property, or to Northlake's right and title
21 thereto.

22 47. If the information provided by Northlake pursuant to this Section is not materially true
23 and complete, the Covenant Not to Sue in Section XVI shall not be effective with respect to
24 Northlake, and Ecology reserves all rights it may have against Northlake.

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1 XI. CERTIFICATION OF NORTHLAKE AND SUCCESSORS AND ASSIGNS

2 48. No person may become a Successor in Interest and Assigns under this Decree who has
3 participated in the discharge of sandblast grit and other contaminants from past shipyard activities at
4 the Property. The parties to this Decree do not intend, however, to prevent persons who may be
5 otherwise liable for general sediment contamination at Lake Union from receiving protections under
6 this Decree by becoming parties to this Decree. The following paragraphs in this Section define
7 certification requirements to effectuate that intent.

8 49. Northlake and its Successors in Interest and Assigns certify that they did not
9 participate in the discharge of sandblast grit and other contaminants from past shipyard operations at
10 the Property.

11 50. By executing this Decree, Northlake and its Successors in Interest and Assigns
12 represent and certify that, they have fully disclosed herein or in the attached "Agreement of
13 Successors in Interest and Assigns" entered into by such Successors in Interest and Assigns pursuant
14 to Section XII of this Decree, any basis for their potential liability under RCW 70.105D.040(1),
15 including by causing or contributing to a release or threat of release of hazardous substances from
16 activities other than past shipyard operations at the Property.

17 51. If the certifications provided by Northlake or Successors in Interest and Assigns
18 pursuant to this Section are not true or complete, the Covenant Not to Sue in Section XVI shall not
19 be effective with respect to Northlake or its Successors in Interest and Assigns, and Ecology reserves
20 all rights it may have against Northlake or Successors in Interest and Assigns. Provided, however,
21 that a disclosure of potential liability under RCW 70.105D.040(1)(b)-(e) by Successors in Interest and
22 Assigns, as provided in Paragraph 50, shall cause the covenant Not to Sue to be ineffective only as to
23 such disclosed potential liability.

24 XII. CONVEYANCE OF PROPERTY

25 52. The restrictions and obligations set forth in this Decree shall hereafter run with the
26 land and shall be binding upon any and all persons who acquire any interest in all or any portion of the

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1 Property, provided that the rights and benefits afforded by this Decree will apply only to such persons
2 who are eligible to become parties to this Decree and do become parties to this Decree by following
3 the amendment procedures set forth in Section XIII. Provided, however, that persons who lease
4 office space, or obtain other similar minor interests in the Property for purposes unrelated to
5 industrial water-dependent uses shall not be required to become parties to this Decree and shall not be
6 subject to the restrictions and obligations set forth in this Decree, except that revenues derived from
7 such property transfers shall be reflected in the calculations of Adjusted Income and Adjusted Cash
8 Flow required by Section V and Attachment C. Persons who obtain interest(s) in personal property
9 are also not required to become parties to this Decree, except that revenues derived from such
10 property transfer(s) shall be reflected in the calculations of Adjusted Income and Adjusted Cash Flow
11 required by Section V and Attachment C. By excluding certain types of property interest transfers
12 from the obligation to become a party to this Decree, the parties make no statement regarding MTCA
13 liability that may be incurred as a result of acquiring such interest and the parties recognize that any
14 MTCA liability created by such an acquisition may only be resolved by entering into this or another
15 Consent Decree with the State. Within twenty-one (21) calendar days of the effective date of this
16 Decree, Northlake shall record a memorandum describing this Decree with the Recorder's Office,
17 King County, Washington.

18 53. Northlake and its Successors in Interest and Assigns may freely alienate their interest,
19 or any portion thereof, in the Property, provided that the proposed Successor in Interest and Assigns
20 is eligible to become a party to this Decree pursuant to Section XI of this Decree and does become a
21 party to this Decree, and provided that prior to the date of any transfer of interest, including any sale
22 or lease, Northlake or its Successors in Interest and Assigns proposing to transfer such interest shall
23 notify Ecology of the proposed transfer, the names of the proposed Successors in Interest and
24 Assigns that would acquire such interest, the use of the Property proposed by such Successors in
25 Interest and Assigns and the method of payment or performance proposed to satisfy the parties'
26 Payment Obligation(s) (see Paragraph 54 below). The notification required by this paragraph shall

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1 occur at least sixty (60) days before the date of any transfer of interest subject to the stipulated
2 penalty provisions of Paragraph 60. Such notification shall be in the form of Attachment E-1 to this
3 Decree. A copy of this notification shall be provided to DNR.

4 54. The Payment Obligation of a Successor in Interest shall be satisfied in one of the
5 following five ways: (1) by providing for cleanup of the sandblast grit and co-mingled contaminants
6 and payment of associated costs pursuant to and consistent with Section VII and Attachment G;
7 (2) by making a lump sum payment in the amount necessary to achieve a total of \$1,100,000 adjusted
8 for inflation (as defined in Paragraph 17) as of the time of the transfer; (3) by agreeing to a minimum
9 payment schedule sufficient to completely fund the Trust Fund balance of \$1,100,000 adjusted for
10 inflation (as defined in Paragraph 17) within the fifteen year period specified in Paragraph 30; (4) by
11 participating in a profit-sharing arrangement under the same terms as Northlake, or as modified as set
12 forth below in Paragraphs 56 and 57; or (5) in the event that a proposed transfer would result in
13 multiple persons simultaneously holding interests in the Property, by participating in a profit-sharing
14 arrangement that reflects all parties' Payment Obligations. The arrangement may involve one party
15 making the profit-sharing payments to satisfy the Payment Obligations of all parties so long as the
16 payments reflect the profit potential of the entire Property. By way of example, Northlake's profit-
17 sharing payments could include a component reflecting the rental income received from a lessee. In
18 such case, Northlake's payments would satisfy the Payment Obligations of both Northlake and the
19 lessee. A Successor in Interest and Assigns proposing a modified profit-sharing arrangement shall so
20 indicate in its notification to Ecology under Paragraph 53. The parties will negotiate to achieve the
21 goals set forth in Paragraph 57.

22 55. Upon receipt of notification of a proposed transfer of interest of the Property in which
23 a proposed Successor in Interest and Assigns indicates its intention to fulfill its Payment Obligation by
24 profit-sharing as provided in Paragraph 53, Ecology may, in its discretion, initiate negotiations with
25 the proposed Successors in Interest and Assigns to modify the profit-sharing obligations under
26

1 Paragraphs 56 and 57. Ecology may initiate such modification only if one of the following criteria is
2 met:

3 (a) the use contemplated by the proposed Successor in Interest and Assigns is not
4 similar to Northlake's use of the Property; or

5 (b) profits available for profit-sharing are reasonably expected to be substantially
6 lower than those anticipated by the parties at the time this Decree was entered.

7 56. If Ecology intends to seek modification of the profit-sharing obligations under
8 Paragraph 55, or if Ecology makes a determination that profit-sharing cannot meet the goals set forth
9 in Paragraph 57, it must notify the proposed Successors in Interest and Assigns of such intention
10 within thirty (30) days of its receipt of notification of proposed transfer of interest in the Property. If
11 Ecology fails to timely provide such notification, its right to modify the profit-sharing obligations will
12 be deemed waived and the proposed Successors in Interest and Assigns will be subject to the Payment
13 Obligation originally elected by the Successor in Interest and Assigns pursuant to Paragraphs 53 and
14 54.

15 57. If Ecology elects to negotiate with a proposed Successor in Interest and Assigns
16 regarding profit-sharing, or if the proposed Successor in Interest and Assigns proposes alternative
17 profit-sharing terms in its notification to Ecology, the parties agree that the goals of the resulting
18 profit-sharing arrangement shall be to fully fund Trust Fund within the fifteen-year period while
19 allowing sufficient profits to maintain a viable economic use of the Property. If the parties are unable
20 to reach agreement on a profit-sharing arrangement within thirty (30) days of the initiation of profit-
21 sharing negotiations, unless all parties agree to an extension of time, the parties agree to follow the
22 dispute resolution procedures set forth in Section XIV.

23 58. If Ecology determines that no profit-sharing arrangement can achieve the two goals set
24 forth in Paragraph 57, Ecology shall notify the proposed Successor of its determination and the
25 Successor shall elect either the first, second, or third method of satisfying the Payment Obligation set
26 forth in Paragraph 54. If the proposed Successor in Interest and Assigns disagrees with an Ecology

1 determination made pursuant to this Paragraph, the parties agree to follow the dispute resolution
2 procedures set forth in Section XIV. If the outcome of any such dispute resolution proceeding
3 triggered by Paragraph 57 or this Paragraph is a determination that profit-sharing cannot achieve the
4 goals set forth in Paragraph 57, the Successor in Interest and Assigns shall elect either the first,
5 second, or third method of satisfying the Payment Obligation set forth in Paragraph 54 or shall elect
6 to not become a party to this Decree.

7 59. Prior to transferring its interest, Northlake or its Successors in Interest and Assigns
8 shall require the proposed Successor in Interest and Assigns to sign the attached "Agreement of
9 Successors in Interest and Assigns" (Attachment E-2), or a substantially equivalent document, thereby
10 consenting to be bound by the applicable terms and conditions of this Decree and modifying the
11 Decree as necessary to reflect how the proposed Successor in Interest and Assigns will satisfy its
12 Payment Obligation.

13 60. The Covenant Not to Sue shall not be effective with respect to any Successors in
14 Interest and Assigns who fail to execute the attached "Agreement of Successors in Interest and
15 Assigns", or a substantially equivalent document, or fail to follow the notification requirements of this
16 Section or fail to follow the amendment procedure set forth in Section XIII. Failure of Northlake or
17 Successors in Interest and Assigns who acquire an interest in the Property to timely comply with this
18 Section's notification requirements shall subject such party to a stipulated penalty of \$5,000.
19 However, this stipulated penalty does not in any way alter the rights and obligations of any party as
20 set forth elsewhere in this Decree, including Ecology's reservation of rights under Paragraph 73 of
21 this Decree.

22 XIII. AMENDMENT OF CONSENT DECREE; ADDING NEW PARTIES TO DECREE

23 61. This Decree may only be amended by a written stipulation among the parties to this
24 Decree that is thereafter entered and approved by order of the Court, except as provided in
25 Paragraph 63. Such amendment shall become effective upon entry by the Court, or upon a later date
26 if such date is expressly stated in the parties' written stipulation or the Court so orders.

62. Amendments may cover any subject or be for any purpose agreed to by the parties to this Decree, including for the purpose of making Successors in Interest and Assigns new parties to the Decree. If Ecology determines that the subject of an amendment requires public input, Ecology shall provide thirty (30) days public notice prior to seeking entry of the amendment by the Court, except that Ecology agrees that an amendment to make Successors in Interest and Assigns parties to this Decree and/or to amend profit-sharing obligations of Successors in Interest and Assigns shall not require public notice or comment, provided that such amendment falls within the scope of modifications described by Section XII.

63. As part of the notice to Ecology required by Section XII of this Decree, when Northlake or Successors in Interest and Assigns contemplate conveyance of the Property, the proposed Successors in Interest and Assigns shall request that the Decree be amended as required by, and provided for in, this paragraph. The amendment to the Decree may be in the form of Attachment E-2, "Agreement of Successors in Interest and Assigns". Ecology may only withhold consent to an amendment making Successors in Interest and Assigns party to this Decree if it provides written notification to the party or parties notifying Ecology of the proposed transfer in interest pursuant to Section XII of this Decree. The written notification shall state that Northlake or its Successors in Interest and Assigns is in violation or will be in violation of a material term of the Decree. Such written notification must be received within thirty (30) days of the date Ecology was notified of the proposed transfer. If Ecology does not provide such notification within thirty (30) days, the Court is authorized to enter the amendment without further action by Ecology. Provided, however, that failure of Ecology to comment within thirty (30) days does not compromise or affect any rights Ecology may have under this Decree, the Clean Water Act, MTCA, or other applicable law.

XIV. DISPUTE RESOLUTION

64. In the event a dispute arises as to an approval, disapproval, proposed modification, or other decision or action by Ecology's project coordinators, or as to the amount of profits owed by

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1 Northlake or its Successors in Interest and Assigns pursuant to Section V of this Decree, the parties
2 shall use the dispute resolution procedure set forth below.

3 (1) Upon receipt of the Ecology project coordinator's decision, Northlake or its
4 Successors in Interest and Assigns have fourteen (14) days within which to notify Ecology's project
5 coordinator of any objection to the decision.

6 (2) The parties' project coordinators shall then confer in an effort to resolve the
7 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's
8 project coordinator shall issue a written decision.

9 (3) Northlake or its Successors in Interest and Assigns may then request Ecology
10 management review of the decision. This request shall be submitted in writing to the Toxics Cleanup
11 Program Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

12 (4) Ecology's Toxics Cleanup Program Manager shall conduct a review of the
13 dispute and shall issue a written decision regarding the dispute within thirty (30) days of Northlake's
14 or its Successors' in Interest and Assigns' request for review. The Toxics Cleanup Program
15 Manager's decision shall be Ecology's final decision on the disputed matter.

16 65. If Ecology's final written decision is unacceptable to Northlake or its Successors in
17 Interest and Assigns, Northlake or its Successors in Interest and Assigns have the right to submit the
18 dispute to the Court for resolution. The parties agree that one judge should retain jurisdiction over
19 this case and shall, as necessary, resolve any dispute arising under this Decree. In the event Northlake
20 or its Successors in Interest and Assigns present an issue to the Court for review, the Court shall
21 review the action or decision of Ecology under an arbitrary and capricious standard of review.

22 66. The parties agree to use the dispute resolution process in good faith and agree to
23 expedite, to the extent possible, the dispute resolution process whenever it is used. When either party
24 uses the dispute resolution in bad faith or for purposes of delay, the other party may seek sanctions.

25 67. The implementation of these dispute resolution procedures shall not provide a basis for
26 delay of any payment required in this Decree, unless Ecology agrees in writing to a schedule

1 extension or the Court so orders. Provided, however, that if the dispute involves the amount of
2 payment owed as profit-sharing under Section V of this Decree, Northlake or its Successors in
3 Interest and Assigns shall be entitled to deposit in the Trust Fund the amount it asserts is payable until
4 such dispute is resolved. Upon any determination that a greater sum was owed under Section XIV of
5 this Decree, Northlake or its Successors in Interest and Assigns shall deposit sums owing, plus
6 interest that would have accrued had such sums been deposited in the Trust Fund on the date payable.
7 Payment of sums owing pursuant to such determination shall be made within ten (10) days of such
8 determination.

9 XV. CONTRIBUTION PROTECTION

10 68. With regard to claims for contribution against Northlake or its Successors in Interest
11 and Assigns for matters addressed in this Decree, Ecology agrees that Northlake and its Successors in
12 Interest and Assigns are entitled to protection from contribution actions or claims as is provided by
13 MTCA, RCW 70.105D.040(4)(d), or as otherwise provided by law.

14 XVI. COVENANT NOT TO SUE UNDER MTCA; REOPENERS

15 69. In consideration of the mutual promises and covenants herein, Ecology hereby
16 covenants not to sue, to execute judgment, nor to take any civil judicial, or administrative action, nor
17 to establish any lien against Northlake or its Successors in Interest and Assigns for claims pursuant to
18 RCW 70.105D.040, or otherwise under state or federal law with respect to the Present
19 Contamination and contamination known and documented to exist off-site at the time of entry of this
20 Decree if and when that contamination migrates onto the Property. This Covenant Not to Sue does
21 not apply to Ecology's claims under RCW 70.105D.040 with respect to the Present Contamination
22 and contamination known and documented to exist off-site arising from:

23 (1) Northlake or Successors in Interest and Assigns' ownership or operation or
24 future acquisition of a property or business other than the Property.

25 (2) Northlake or Successors in Interest and Assigns' activities including but not
26 limited to ownership or operation of the Property prior to the effective date of this Decree.

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1 (3) Any liability arising from Northlake's or Successors in Interest and Assigns'
2 activities as generator, transporter, broker, storage facility, user, distributor, blender, or vendor of
3 hazardous substances, or storage, use, management or other responsibility for hazardous substances
4 that result or has resulted in releases that would be sufficient to create liability under
5 RCW 70.105D.040(1)(c)-(e).

6 70. Northlake has consented to the consideration set forth in this Decree and stipulated
7 penalty set forth in Paragraph 60.

8 71. All of Northlake's and its Successors in Interest and Assigns' rights, benefits, and
9 obligations under this Decree and Covenant Not to Sue may be assigned, transferred, and shall run to
10 any person that acquires an interest in the Property pursuant to the procedures set forth in
11 Section XII and Section XIII of this Decree. Such rights, benefits, obligations and the Covenant Not
12 to Sue shall not take effect until this Decree is amended pursuant to Section XIII.

13 72. Northlake and Successors in Interest and Assigns agree not to assert any claims or
14 causes of action against the State Toxics Control Account, any local toxics control account, or
15 Ecology, for reimbursement of funds expended, or to seek any other costs, damages, or attorney's
16 fees from Ecology, with respect to any remedial activities undertaken or costs incurred pursuant to
17 this Decree, or arising from the Present Contamination.

18 73. Ecology retains all of its legal and equitable rights against all persons, except as
19 otherwise provided in this Decree. The legal and equitable rights retained by Ecology include, but are
20 not limited to, the right to compel any person, other than Northlake or Successors in Interest and
21 Assigns, to take remedial actions for the Present Contamination, or for known and documented off-
22 site contamination if and when such contamination migrates onto the Property, and to seek
23 reimbursement against such persons for costs incurred by Ecology as a result of such contamination.

24 74. Northlake and its Successors in Interest and Assigns agree that any rights of
25 contribution they may exercise against third parties are subordinate to the rights of Ecology to compel
26 such third parties to take remedial actions or to seek reimbursement from such persons for costs

1 incurred as a result of Present Contamination. The parties recognize, however, that if Northlake or
2 its Successors in Interest and Assigns develops a specific proposal to pursue rights against third
3 parties, either on its own behalf or in conjunction with Ecology, and Ecology is persuaded that a
4 modification of this Paragraph would be in the public interest, the parties may amend this Paragraph
5 by following the procedures set forth in Section XIII.

6 75. Reopeners:

7 (1) Ecology reserves the right to seek modification of this Decree or to institute an
8 action under § 70.105D.050 of MTCA or take any other action authorized by law against any person,
9 including Northlake or its Successors in Interest and Assigns, if factors, including contamination
10 unknown or undocumented at the time of entry of the Decree are discovered and present a previously
11 unknown threat to human health or the environment. This reopener shall not apply to contamination
12 known and documented to exist off-site at the time of entry of the Decree if and when such
13 contamination migrates onto the Property subsequent to entry of this Decree.

14 (2) Ecology reserves the right to seek modification of this Decree or to institute an
15 action under § 70.105D.050 of MTCA or take any other action authorized by law in the event
16 Northlake or its Successors in Interest and Assigns fail to comply with the terms and conditions of
17 this Decree, and after written notice of noncompliance fail to come into compliance. Ecology agrees
18 that it will use good faith in determining whether to invoke this reopener. This reopener should
19 ordinarily not be invoked, for example, where Northlake's or its Successors in Interest and Assigns'
20 noncompliance with a term or condition of this Decree results in an insignificant time delay in
21 performance.

22 76. Prior to initiating any proceeding against Northlake or Successors in Interest and
23 Assigns for liability with respect to the matters covered by the Covenant Not to Sue in Section XVI
24 as a result of previously unknown or undocumented factors, or a breach of this Decree, Ecology shall
25 first provide Northlake and Successors in Interest and Assigns an opportunity to provide Ecology
26 with evidence rebutting such claims, to which Ecology will respond in writing. In asserting this

1 Decree as a defense in any proceeding by Ecology for costs or claims involving the Property,
2 Northlake and Successors in Interest and Assigns shall have the burden of proving that such claim(s)
3 were covered by this Decree or that such claim(s) were satisfied by the performance of their
4 obligations under this Decree.

5 77. Applicability: Notwithstanding any other provisions of this Decree, Ecology reserves
6 the right to assert, and the Covenant Not to Sue set forth in Section XVI shall not apply with respect
7 to, any claims or causes of action against Northlake and Successors in Interest and Assigns, either
8 administrative or judicial, after the effective date of this Decree, arising from any:

9 (1) Release or threat of release of hazardous substances, pollutants or
10 contaminants, other than Present Contamination or known and documented off-site contamination if
11 and when such contamination migrates onto the Property, resulting from Northlake or Successors in
12 Interest and Assigns' ownership, operation, use, or development of the Property;

13 (2) Introduction of any hazardous substances, pollutant, or contaminant, not
14 including the Present Contamination and known and documented off-site contamination if and when
15 such contamination migrates onto the Property, to or at the Property in the future;

16 (3) Interference with any remediation of the Property conducted or required by
17 Ecology and any failure of Northlake or Successors in Interest and Assigns to cooperate, as required
18 by MTCA, with Ecology, its employees, agents, contractors or other authorized representatives
19 conducting response activities under Ecology direction or oversight at the Property;

20 (4) Future transportation and disposal of hazardous substances from the Property;

21 (5) Exacerbation of the Present Contamination and known and documented off-
22 site contamination, if and when such contamination migrates onto the Property, by Northlake or
23 Successors in Interest and Assigns, including but not limited to creating a pathway for contamination
24 (e.g., surface or subsurface runoff and migration) associated with activities at the Property;

25 (6) Failure to exercise due care with respect to any hazardous substances,
26 pollutants or contaminants at the Property including, but not limited to, the Present Contamination

1 and known and documented off-site contamination if and when such contamination migrates onto the
2 Property:

3 (7) Any and all criminal liability;

4 (8) Claims based on failure of Northlake or Successors in Interest and Assigns to
5 meet a requirement of this Decree, except as provided in Paragraph 53 with respect to notification
6 only; or

7 (9) Liability for damages for injury to, destruction of, or loss of natural resources.

8 XVII. NORTHLAKE RESERVATION OF RIGHTS

9 78. Northlake and any Successors in Interest and Assigns reserve all rights and defenses
10 which they may have and which are not otherwise addressed in this Decree. The execution of the
11 "Agreement of Successors in Interest and Assigns" attached hereto as Attachment E-2 or an
12 amendment to this Decree by Northlake or Successors in Interest and Assigns is not an admission of
13 liability on their part.

14 79. Except as provided herein for Northlake and Successors in Interest and Assigns, this
15 Decree does not grant any rights or affect any liabilities of any person, firm or corporation or
16 subdivision or division of state, federal, or local government.

17 XVIII. DISCLAIMER

18 80. This Decree in no way constitutes a finding by Ecology as to the risks to human health
19 or the environment which may be posed by contamination at the Property. This Decree does not
20 constitute a representation by Ecology that the Property is fit for any particular purpose.

21 XIX. RETENTION OF RECORDS

22 81. Northlake and Successors in Interest and Assigns shall retain for a minimum of ten
23 (10) years, all business records, reports, and contracts that relate to the calculation of profits owed
24 under Section V of this Decree and to the Present Contamination and known and documented off-site
25 contamination if and when such contamination migrates onto the Property. Thereafter, no such
26 record shall be destroyed unless notice of the destruction is provided to Ecology by registered mail at

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SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580

1 least sixty (60) days prior to the destruction. All non-privileged archived records, until destroyed
2 pursuant to this Paragraph, shall be made available for copying upon Ecology's written request.

3 XX. NOTICES

4 82. All notices that may be or are required to be given by one party to the other under this
5 Decree shall be given in writing. Notices shall be addressed to the project coordinator's addresses set
6 forth in Section IX. They shall be deemed received upon delivery in the case of personal service, and
7 two days after postmarked, if sent by United States mail. When notice to DNR is required by this
8 Decree, notice shall be sent to David Bortz, Department of Natural Resources Division of Aquatic
9 Lands, 1111 Washington Street SE, PO Box 47027, Olympia, Washington 98504-7027.

10 XXI. SITE ACCESS/COOPERATION WITH REMEDIAL ACTIONS

11 83. Northlake and Successors in Interest and Assigns grant to Ecology, its employees,
12 agents, contractors and authorized representatives, an irrevocable right to enter upon the Property,
13 with reasonable notice and at any reasonable time for purposes of allowing Ecology to monitor or
14 enforce compliance with this Decree, including implementation of remedial activities anticipated by or
15 provided for in this Decree. This right of entry is in addition to any right Ecology may have to enter
16 onto the Property pursuant to specific statutory or regulatory authority. Consistent with Ecology's
17 responsibilities under state and federal law, Ecology, and any persons acting for it, shall use their best
18 efforts to minimize any interference and use their best efforts not to unreasonably interfere with the
19 operations of Northlake or Successors in Interest and Assigns by any such entry and provide
20 Northlake or Successors in Interest and Assigns reasonable notice.

21 84. Notwithstanding any provision of this Decree, Ecology retains all of its access
22 authorities and access rights, including enforcement authorities related thereto, under MTCA and any
23 other applicable state statute or regulations.

24 85. Nothing in this Decree shall in any manner restrict or limit the nature or scope of
25 response actions which may be taken by Ecology in fulfilling its responsibilities under state or federal
26 law. Northlake recognizes that even with the use of best efforts on the part of Ecology, the

PROSPECTIVE PURCHASER
CONSENT DECREE RE:
NORTHLAKE SHIPYARD, INC. - 27

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PRESTON GATES & ELLIS
5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580

1 implementation of response actions at the Property may interfere with Northlake's or Successors in
2 Interest and Assigns' use or development of the site. Northlake and Successors in Interest and
3 Assigns agree to cooperate with Ecology in the implementation of response actions, provided that
4 they do not waive any due process rights related thereto unless specifically waived pursuant to this
5 Decree. The parties acknowledge that cleanup may entail interference with normal business activities
6 including moving of dry docks.

7 XXII. OTHER APPLICABLE LAWS

8 86. Northlake and Successors in Interest and Assigns agree that they will abide by all
9 federal and state laws and regulations and that they will exercise due care with respect to any
10 hazardous substances, pollutants, or contaminants at the Property unless a higher standard of care is
11 required by law. Nothing in this Decree shall be construed to affect liability under laws not addressed
12 by this Decree, including the Comprehensive Environmental Response, Compensation and Liability
13 Act of 1983 ("CERCLA"), 42 U.S.C. §§ 9601-9675.

14 XXIII. DURATION OF DECREE AND RETENTION OF JURISDICTION

15 87. This Decree shall remain in effect and this Court shall retain jurisdiction over both the
16 subject matter of this Decree and the parties for the duration of the performance of the terms and
17 provisions of this Decree for the purpose of enabling any of the parties to apply to the Court,
18 consistent with the dispute resolution process set forth in Section XIV, and the amendment process
19 set forth in Section XIII, at any time for such further order, direction, and relief as may be necessary
20 or appropriate to ensure that obligations of the parties have been satisfied.

21 XXIV. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

22 88. This Decree has been the subject of public notice and comment under RCW
23 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a
24 more expeditious cleanup of hazardous substances at the Property, in compliance with applicable
25 cleanup standards, and is in the public interest.
26

1 89. If the Court withdraws its consent, this Decree shall be null and void at the option of
2 any party. In such an event, no party shall be bound by the requirements of this Decree.

3 XXV. EFFECTIVE DATE

4 90. The effective date of this Decree is the date on which the purchase of the Property by
5 Northlake from United Marine is finally closed.

6 So ordered this ____ day of _____, 1994.

7 **AUG 12 1994**

Maurice H. Epstein

8 Judge
9 King County Superior Court

10 The undersigned parties enter into this Prospective Purchaser Consent Decree on the date
11 specified below.

12 NORTHLAKE

13 By: _____

14 Its: _____

15 Date: _____

16 DEPARTMENT OF ECOLOGY

17 By: _____

18 Title: _____

19 Date: _____

20 ATTORNEY GENERAL'S OFFICE

21 By: _____

22 Title: _____

23 Date: _____

24 PROSPECTIVE PURCHASER
25 CONSENT DECREE RE:
26 NORTHLAKE SHIPYARD, INC. - 29

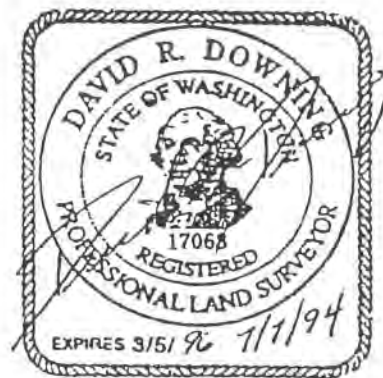
DESCRIPTION OF UPLAND PARCEL

LOT 1 THROUGH 9 AND THE NORTHWESTERLY HALF OF LOT 10, BLOCK 101, OF THE PLAT OF LAKE UNION SHORE LANDS DATED JULY 1, 1907 AND ON FILE IN OLYMPIA, WASHINGTON.

DESCRIPTION OF PROPOSED D.N.R. LEASE

A PORTION OF THE BED OF LAKE UNION, LYING IN FRONT OF LOT 1 THROUGH 9 AND THE NORTHWESTERLY HALF OF LOT 10, BLOCK 101, OF THE PLAT OF LAKE UNION SHORE LANDS DATED JULY 1, 1907 AND ON FILE IN OLYMPIA, WASHINGTON AND DESCRIBED AS FOLLOWS:

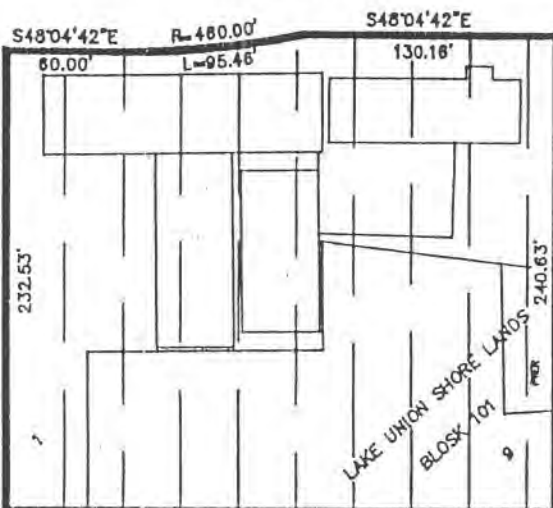
BEGINNING AT THE MOST WESTERLY CORNER OF SAID BLOCK 101; THENCE ALONG A PROJECTION OF THE NORTHWESTERLY LINE THEREOF SOUTH $43^{\circ}33'55''$ WEST A DISTANCE OF 400.00 FEET; THENCE PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID BLOCK 101 SOUTH $48^{\circ}26'05''$ EAST A DISTANCE OF 285.00 FEET; THENCE ALONG A PROJECTION OF THE SOUTHEASTERLY LINE OF THE NORTHWESTERLY HALF OF SAID LOT 10, NORTH $41^{\circ}33'55''$ EAST A DISTANCE OF 400.00 FEET TO THE SAID SOUTHWESTERLY LINE OF SAID BLOCK 101; THENCE ALONG SAID LINE NORTH $48^{\circ}26'05''$ WEST A DISTANCE OF 285.00 FEET TO THE POINT OF BEGINNING



N. NORTH LAKE WAY

WATERWAY NO. 21

WATERWAY NO. 20



S41°33'55"W
400.00'

PROPOSED LEASE AREA
114,000 sq. ft.
2.62 acres

400.00'
S41°33'55"W

300.00'
N41°33'55"E

200.15'
S48°26'05"E

100.00'
N41°33'55"E

285.00'
S48°26'05"E
320.00'
CONSTRUCTION LIMIT LINE



ATTACHMENT C
PROFIT SHARING

Section V of this Prospective Purchaser Consent Decree provides that Northlake will make cash contributions to a Trust Fund. The accumulated funds contained in that fund will be used to clean up the sandblast grit and other co-mingled contaminants at the Property, cover Ecology oversight costs, and to provide post-cleanup evaluation. Disbursements from this Trust Fund will be made according to Section VI of this Decree. Northlake's contribution to the Trust Fund will consist of an initial deposit of \$400,000 and future deposits of cash based upon a share of the Adjusted Income (as defined in paragraph 4 below) or Adjusted Cash Flow (as defined in paragraph 5 below) generated by Northlake's or its Successors in Interest and Assigns' activities at the Property, together with accumulated interest and growth from investments of the Trust Fund. For purposes of this agreement, cash contribution shall be calculated as follows:

1. The obligation to make a cash contribution shall begin to accrue on July 1, 1996, and the first payment shall be deposited into the Trust Fund by March 31, 1997. Northlake's and its Successors in Interest and Assigns' obligation to make cash contributions to the Trust Fund shall continue until June 30, 2009 or until its Payment Obligation is otherwise satisfied as provided in Section V of this Decree. Northlake and its Successors in Interest and Assigns shall not change their fiscal year without first obtaining written consent from Ecology, which consent shall not be unreasonably withheld.

2. Northlake's and its Successors in Interest and Assigns' annual cash contribution shall be equal to the greater of fifteen percent (15%) of Northlake's or its Successor in Interest and Assigns' annual Adjusted Income or Adjusted Cash Flow. Provided, however, that the cash contribution for the period from July 1, 1996 through December 31, 1996 shall be equal to the greater of seven and one-half percent (7.5%) of Northlake's or its Successors in Interest and Assigns Adjusted Income or Adjusted Cash Flow for all of 1996.

1 3. Northlake's and its Successors in Interest and Assigns' obligation to make a cash
2 contribution to the Trust Fund shall be computed and shall accrue on a calendar-year basis.
3 However, Northlake and its Successors in Interest and Assigns shall be required to make progress
4 payments on a semi-annual basis. The first payment due in any calendar year shall be based upon
5 interim financial statements prepared for the first six months of any year and payment shall be made
6 by August 31 of each year. The final payment for any year shall be due by March 31 of the following
7 year. The semi-annual progress payment shall be credited toward the amount that is computed and
8 accrued at the end of the year. In the event that the progress payment exceeds the total payment
9 computed for the year, the excess shall only be used as a credit against payments due in future years.

10 4. For the purposes of this agreement, Adjusted Income shall be defined by beginning
11 with Net Income as computed in accordance with Generally Accepted Accounting Principles
12 (GAAP), and modified as follows:

13 (a) Adjusted Income shall not reflect any deduction for Excess Compensation as
14 defined below. For the purpose of this Paragraph, Compensation shall be defined to include salaries,
15 bonuses, contributions to pension plans, and dividends. Compensation shall also include any other
16 cash payments or property distributions to any person or entity to the extent that such cash payments
17 or property distributions exceed the commercially reasonable value of any goods or services provided,
18 or are not related to bona fide arms length business transactions entered into in the normal course of
19 Northlake's or its Successors in Interest and Assigns' operations at the Property.

20 (i) Excess Compensation shall be defined as follows:

21 (1) Any Compensation paid to Peter Kelly, or the principal
22 shareholder in Northlake or its Successors in Interest and Assigns, that exceeds \$150,000 per year.
23 This amount shall be adjusted for inflation annually by the annual increase or decrease in the
24 Consumer Price Index (as defined in Paragraph 17 of the Decree).

25 (2) Any Compensation paid to a person or an entity that exceeds
26 the commercially reasonable value of the services or goods provided by such person or entity, or the

1 entire value of the Compensation where the services or goods provided are not related to Northlake's
2 or its Successors in Interest and Assigns' operation at the Property.

3 (3) The payment of any interest to shareholders or officers of
4 Northlake, or to a person or entity related to Northlake or its Successors in Interest and Assigns, its
5 shareholders or officers, to the extent that such interest payments exceed commercially reasonable
6 rates for similar transactions.

7 (ii) Northlake and its Successors in Interest and Assigns agree to provide
8 an annual disclosure statement outlining the basis for the computation of any Excess Compensation.
9 In addition, the disclosure statement must:

10 (1) Identify the value of any Compensation paid to officers,
11 shareholders and companies related to Northlake or its Successors in Interest and Assigns, and any
12 person related by familial ties to a shareholder or officer of Northlake or its Successors in Interest and
13 Assigns.

14 (2) Certify that the Compensation provided to each of the persons
15 or entities identified in (a)(ii)(1) does not exceed the commercially reasonable value of the goods or
16 services provided, and that the goods and services provided were related to Northlake's or its
17 Successors in Interest and Assigns' operations at the Property.

18 (b) A purchase agreement between Northlake and the National Bank of Alaska
19 (NBA) was executed in March 1994. Said purchase agreement does not require any interest
20 payments until April 1999. Northlake agrees not to restructure the basic terms of this agreement with
21 NBA or its successors and assigns without first obtaining Ecology's consent which consent shall not
22 be unreasonably withheld.

23 (c) Adjusted Income shall not include any deduction or provision for federal or
24 state income taxes. Deductions shall be allowed for Washington state property taxes, leasehold
25 excise taxes, business and occupation taxes, and sales taxes on purchases.

1 5 For the purposes of this agreement, Adjusted Cash Flow shall be computed using Net
2 Income as a starting point which shall then be adjusted using Generally Accepted Accounting
3 Principles (GAAP) regarding Cash Flow with the following modifications:

4 (a) Adjusted Cash Flow shall not reflect any cash outflows based on the effects of
5 any provisions for, or payments of, excess Compensation which is excluded from Adjusted Income as
6 determined in subsection 3(a) above. In addition, Adjusted Cash Flow shall not reflect any cash
7 outflows based upon cash relating to the following investing or financing transactions:

8 (i) Dividends or distributions of cash or property made to partners,
9 shareholders, officers or related corporations, provided, however, that excluded distributions do not
10 include payments made to reimburse such individuals for business expenditures or actual services
11 provided to Northlake or its Successors in Interest and Assigns.

12 (ii) Loan proceeds paid or distributed to, or interest or principal payments
13 to: partners, shareholders, officers or related corporations with respect to obligations that are not
14 arms-length bona fide business transactions related to the operations at the Property.

15 Adjusted Cash Flow shall not include any adjustments for cash inflows relating to financing
16 proceeds on debt or equity instruments issued or entered into to the extent that the transactions are
17 arms-length bona fide business transactions and the proceeds from the transactions are used to finance
18 the operations at the Property.

19 (b) Adjusted Cash Flow shall not reflect any cash outflows based on the effects of
20 any provisions for, or payments of, certain payments made pursuant to the purchase agreement
21 entered into between Northlake and NBA in March of 1994. The payments referenced in this
22 subsection include all payments made pursuant to the NBA agreement during the first sixty months
23 after the closing of the NBA Agreement, and all payments relating to the retirement of any
24 outstanding principal portion of this obligation commencing with the sixty-first month after the
25 closing of the NBA Agreement.

1 (c) Adjusted Cash Flow shall not reflect any cash outflows based on the effects of
2 any provisions for, or payments of, federal and state income taxes.

3 6. For the purposes of this agreement, Northlake's or its Successors in Interest and
4 Assigns' semi-annual progress payments may be based upon interim financial statements generated by
5 Northlake and its Successors in Interest and Assigns. Northlake's and its Successors in Interest and
6 Assigns' year-end financial statements shall be reviewed by an independent certified public accountant.
7 The year-end financial statements shall contain footnotes that address the basis for the computation of
8 Northlake's or its Successors in Interest and Assigns' cash contribution to the Trust Fund. The review
9 conducted by the independent CPA shall include review of the computation, and basis for such
10 computation, of Northlake's or its Successors in Interest and Assigns' cash contributions to the Trust
11 Fund. In the event that Ecology's review of these year-end financial statements, and the computation
12 of Northlake's or its Successors in Interest and Assigns' cash contribution, leads Ecology to conclude
13 that they have not been prepared in accordance with this Decree, Ecology may require Northlake or
14 its Successors in Interest and Assigns to prepare audited financial statements for the period in
15 question. These audited statements shall be prepared within ninety (90) days of receipt of notice from
16 Ecology that audited statements are required.

1 ATTACHMENT D
2 NORTHLAKE TRUST AGREEMENT
3

4 THIS DECLARATION OF TRUST, dated this ____ day of _____, 1994, is made and
5 entered into by and among NORTHLAKE SHIPYARD, INC. ("Grantor"), and West One Bank
6 ("Trustee"), pursuant to the Prospective Purchaser Consent Decree (the "Consent Decree") between
7 the State of Washington Department of Ecology ("Ecology") and Grantor. The Beneficiary of the
8 Trust shall be Ecology.

9 WITNESSETH:

10 WHEREAS, Grantor has agreed to transfer, assign, and convey unto the Trustee the sum of
11 Four Hundred Thousand and No/100 Dollars (\$400,000.00) in trust, pursuant to the terms of the
12 Consent Decree; and

13 WHEREAS, Grantor and its Successors in Interest and Assigns have agreed to transfer,
14 assign, and convey unto the Trustee additional funds in trust, pursuant to the terms of the Consent
15 Decree; and

16 WHEREAS, funds transferred by Grantor shall constitute the initial corpus of the trust hereby
17 created and shall be held, invested, and distributed pursuant to the terms of this Agreement, it is
18 therefore agreed as follows:

19 I. Trust Estate. The Trust Estate, as that term is used in this trust, shall consist of the
20 following:

- 21 1. The initial \$400,000 transferred to the Trustee by Grantor as herein provided;
22 and
23 2. Any additional funds transferred to the Trustee by Grantor, its Successor, in
24 Interest and Assigns, or any other party; and
25 3. The proceeds, investments, and reinvestments of the assets so transferred to
26 the Trustee.

1 II. Trust Purpose. The Trustee shall hold, invest, reinvest, and distribute the Trust
2 Estate, as Trustee, in accordance with the terms and conditions set forth herein. This trust is
3 organized and shall be operated to provide a source of funds for the purpose of paying for the
4 remedial action referenced in the Consent Decree. In furtherance of this purpose, the Department of
5 Ecology project coordinator designated in the Consent Decree, hereinafter referred to as the "Project
6 Coordinator" has sole power to direct the Trustee to make distributions from the Trust Estate in the
7 manner hereinafter provided for.

8 III. Distributions. The Trust Estate shall be distributed by the Trustee from time to time
9 as directed in writing by the Project Coordinator pursuant to the Consent Decree. Such Trustee may
10 rely with acquittance upon any written direction of payment made by the Project Coordinator.

11 IV. Duration. This trust shall continue until the Estate has been distributed for the
12 activities and purposes set forth herein and in the Consent Decree. Termination of the trust in that
13 event shall be by written notice as provided in Paragraph VI. If the Trust Estate has not been wholly
14 distributed pursuant to the first sentence of this paragraph or there has not been a direction to
15 distribute funds pursuant to the Consent Decree which will exhaust the funds prior to June 30, 2012,
16 then upon written notice from the Project Coordinator all such remaining unappointed funds shall be
17 delivered consistent with the purpose of this Agreement and the terms of a Memorandum of
18 Agreement regarding this site entered between Ecology and the United States Environmental
19 Protection Agency ("EPA") and this Trust shall thereafter terminate.

20 V. Amendment of Agreement. This Agreement may only be amended by an instrument in
21 writing executed by the Grantor or its Successors in Interest and Assigns and approved in writing by
22 Ecology, which approvals shall not be unreasonably withheld.

23 VI. Irrevocable Nature of Trust. Subject to the right of the parties to amend this trust
24 pursuant to Paragraph V of this Agreement, the trust created by this Agreement shall be deemed
25 irrevocable and shall continue until terminated by written agreement of Grantor or its Successors in
26

1 Interest and Assigns and Ecology pursuant to the terms of the Consent Decree or as otherwise
2 provided in this Trust Agreement.

3 VII. Trustee Management. The Trustee shall invest and reinvest the principal and income
4 of the Fund and keep the Fund invested as a single fund, without distinction between principal and
5 income. In investing, reinvesting, exchanging, selling, and managing the Trust, the Trustee shall
6 discharge his duties with respect to the trust fund solely in the interest of the Beneficiary and with the
7 care, skill, prudence, and diligence under the circumstances then prevailing which persons of
8 prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an
9 enterprise of a like character and with like aims. Investment of the trust shall be in accordance with
10 any general investment policies and guidelines which the Grantor or its Successors in Interest and
11 Assigns may communicate in writing to the Trustee from time to time and in accordance with the
12 following:

13 1. Securities or other obligations of the Grantor or its Successors in Interest and
14 Assigns, of any other owner or operator of the Property, or any of their affiliates as defined in the
15 Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held,
16 unless they are securities or other obligations of the Federal or a State government:

17 2. The Trustee is authorized to invest the Trust Estate in time or demand deposits
18 of the Trustee, to the extent insured by an agency of the Federal or State government; and

19 3. The Trustee is authorized to hold cash awaiting investment or distribution
20 uninvested for a reasonable time and without liability for the payment of interest thereon.

21 The Trustee is expressly authorized in its discretion:

22 1. To transfer from time to time any or all of the assets of the Fund to any
23 common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to
24 participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts
25 participating therein; and
26

2. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

VIII. Powers and Duties of Trustee. Except as specifically restricted hereunder, the Trustee shall have all duties, powers, and rights imposed and granted by the laws of the State of Washington.

In addition to the duties, powers, and rights imposed and granted by law, the Trustee shall have (unless specifically restricted herein) the power and the exercise of discretion in the application thereof to:

1. Determine the allocation of receipts and expenses between income and principal in accordance with the Washington Principal and Income Act;

2. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor or its Successors in Interest and Assigns, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

3. Appoint an ancillary trustee or agent to facilitate the management of assets located in another state, if any;

IX. Resignation. The Trustee shall have the right to resign at any time by delivering its resignation in writing to the Grantor or its Successors in Interest and Assigns, such resignation to take effect upon the acceptance of appointment in writing by successor Trustee. Upon any such resignation, the Grantor or its Successors in Interest and Assigns shall deliver to the Project Manager a copy of the Letter of Resignation, together with a letter proposing to appoint a successor Trustee. Provided, however, any successor Trustee shall be a corporation authorized to conduct trust business within the State of Washington and at the time of its appointment have assets of not less than One Hundred Million Dollars (\$100,000,000.00) of trust funds.

1 Upon the approval of successor Trustee by the Project Manager, the Grantor or its Successors
2 in Interest and Assigns shall in writing appoint a successor Trustee. Acceptance of appointment of
3 successor Trustee shall be in writing and shall become effective upon receipt by the Grantor or its
4 Successors in Interest and Assigns of the notice of such acceptance. A successor Trustee shall be
5 appointed within 60 days of notice of Trustee's intent to resign.

6 Any successor Trustee appointed under this article shall, upon appointment, immediately
7 succeed to all powers, rights, discretions, obligations, and immunities of the Trustee under this
8 Agreement with the same effect as through successor Trustee were originally named as Trustee in this
9 Agreement.

10 X. Taxes and Compensation. All taxes, if any, that are payable by the Trust Estate
11 created hereunder and all brokerage commissions incurred by the trust shall either be paid from the
12 Trust Estate or, at the option of the Grantor or its Successors in Interest and Assigns, be paid directly
13 by the Grantor or its Successors in Interest and Assigns outside the trust. Trustee shall prepare all
14 required income tax returns unless Trustee and the Grantor or its Successors in Interest and Assigns
15 shall agree otherwise. All other expenses incurred by the Trustee in connection with the
16 administration of the trust created hereunder, including fees for legal services reasonably rendered to
17 the Trustee, the compensation of the Trustee, and all other proper charges and disbursements of the
18 Trustee shall either be paid from the Trust Estate directly, or at the option of the Grantor or its
19 Successors in Interest and Assigns, be paid directly by the Grantor or its Successors in Interest and
20 Assigns outside the trust. The Trustee shall be entitled to be paid reasonable compensation as agreed
21 upon by the Grantor or its Successors in Interest and Assigns and the Trustee.

22 XI. Annual Valuation and Audit. The Trustee shall annually, within 10 days after the end
23 of the anniversary date hereof, furnish to the Grantor or its Successors in Interest and Assigns and
24 Beneficiary a statement confirming the value of the trust and showing the receipt of funds for the
25 preceding year and the amount and payee of all distributions made during such year. Such statement
26 shall include the amount of accumulated interest or other income in the trust. Any securities in the

1 Trust Estate shall be valued at market value as of no more than 30 days prior to the date of the
2 statement. In addition to providing the annual valuation pursuant to this Paragraph, the Trustee shall
3 permit a certified public accountant, licensed in the State of Washington, and selected by Grantor or
4 its Successors in Interest and Assigns, to conduct an annual audit of the trust as required by
5 applicable law or regulations and shall such reasonable access to its books and records as necessary
6 for the accountant reasonably to conduct such audit. Such audit shall be conducted at Grantor's or its
7 Successors in Interest and Assigns' discretion.

8 XII. Governing Law. This Trust Agreement shall be administered, construed, and enforced
9 according to the laws of the State of Washington. Should any provision of this Agreement be or
10 become invalid or unenforceable, the remaining provisions of this Agreement shall be and continue to
11 be fully effective.

12 XIII. Notices. Any notices or other communication required or permitted by this
13 Agreement to be delivered to or served on any party shall be deemed properly delivered to, or served
14 on, and received by such party when personally delivered or in lieu of such personal service, when
15 deposited in the United States mail, certified mail with postage prepaid, addressed to the appropriate
16 addresses indicated below or as provided in writing to Trustee from time to time:

17 If to Trustee: _____

18 _____
19 If to Beneficiary: Ecology Project Coordinator, Department of Ecology, Northwest Regional
20 Office, 3190 - 160th Avenue S.E., Bellevue, Washington 98008-5452.

21 If to Grantor: E. Peter Kelly, President, Northlake Shipyard, Inc., 2602 - 39th West, Seattle,
22 Washington 98199.

1 XIV. Benefit. This Agreement shall be binding upon and inure to the benefit of, the
2 respective legal representatives, successors, and assigns of the parties hereto and Beneficiaries hereof.

3 Executed on the ____ day of _____, 1994, at King County, Washington.

4 GRANTOR

5 NORTHLAKE SHIPYARD, INC.

6
7 By _____
8 Its _____

9 TRUSTEE

10 WEST ONE BANK

11 By _____
12 Its _____

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ATTACHMENT D TO PROSPECTIVE
PURCHASER CONSENT DECREE RE:
NORTHLAKE SHIPYARD, INC. - D-7

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08/09/94

09:46 AM

PRESTON GATES & ELLIS
5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580

ATTACHMENT E-1
NOTICE OF PROPOSED TRANSFER

To: Ecology Project Coordinator

From: _____
Northlake or Current Successor in Interest and Assigns

and

Proposed Successors in Interest and Assigns

1. Pursuant to Sections XII and XIII of the Prospective Purchaser Consent Decree re: Northlake Shipyard, Inc. (King County Superior Court Cause No. _____), _____ and _____ hereby give Ecology notice of a proposed transfer in interest of the Property and a proposed amendment to the Consent Decree (see attached proposed amendment).

2. [Proposed Successor in Interest and Assigns] proposes [insert intended use].

3. [Proposed Successor in Interest and Assigns] proposes to satisfy its Payment Obligation under the Consent Decree by: [insert method per Paragraph 54 of Decree] [if proposing a modified profit sharing arrangement, specify how modification will achieve goals set forth in Paragraph 57 of Decree].

4. Ecology has thirty (30) days from this notification to initiate negotiations regarding modification of any proposed profit-sharing arrangement pursuant to Paragraph 57 of the Decree.

5. Ecology has thirty (30) days from this notification to inform [Proposed Successor in Interest and Assigns] that Ecology has determined that a modified profit sharing arrangement will not satisfy the goals set forth in Paragraph 57 of the Decree.

6. Ecology has thirty (30) days from this notification to object to [Proposed Successors in Interest and Assigns] becoming a party to the Decree on the basis of an Ecology determination that [Current Owner] or [Proposed Successors in Interest and Assigns] is or will be in violation of a material term of the Decree as contemplated by Paragraph 63 of the Decree.

7. Failure of Ecology to take any of the actions described in Paragraphs 4, 5, or 6 above shall result in acceptance of the terms proposed by [Proposed Successor in Interest and Assigns] and [Proposed Successors in Interest and Assigns] may seek entry by the court of its proposed amendment (see attached) without signature by Ecology.

8. The undersigned hereby certify that they are in compliance with all terms and conditions of the Decree including but not limited to making the certification referenced in Section XI of the Consent Decree (Certification).

Northlake or Successors in Interest and Assigns

Proposed Successors in Interest and Assigns

ATTACHMENT E TO PROSPECTIVE
PURCHASER CONSENT DECREE RE:
NORTHLAKE SHIPYARD, INC. - E-1-1

ATTACHMENT E-2

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

IN THE MATTER OF:

NORTHLAKE SHIPYARD, INC.

No. _____

AMENDMENT TO PROSPECTIVE
PURCHASER CONSENT DECREE
RE: NORTHLAKE SHIPYARD
PROPERTY INC.

(AGREEMENT OF SUCCESSORS IN
INTEREST AND ASSIGNS)

Pursuant to §§ XII and XIII of the attached Prospective Purchaser Consent Decree ("Decree"), the undersigned Successors in Interest and Assigns hereby agree, as set forth in Section XI of the Decree, to be bound by all applicable provisions of the Decree, including but not limited to the specific obligations of a Successor in Interest and Assigns as set forth in Section V (Profit Sharing Contributions), Paragraph 22 (NPDES Permit/Lease and Use Authorization) Section XI (Certification), Section XII (Conveyance of Property), Section XVI (Covenant Not to Sue), Section XIX (Retention of Records), Section XXI (Site Access), and XXII (Other Applicable Laws).

The undersigned will meet their Payment Obligations under the Decree by [insert whether lump sum, payment schedule, profit sharing pursuant to the Decree or modified profit sharing].

This Agreement of Successors in Interest and Assigns shall be effective upon transfer of title to or any interest in the Property.

So ordered this ____ day of _____, 19__.

Judge
King County Superior Court

ATTACHMENT E-2 TO PROSPECTIVE
PURCHASER CONSENT DECREE RE:
NORTHLAKE SHIPYARD, INC. - E-2-1

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2 IT IS SO AGREED BY THE UNDERSIGNED SUCCESSORS IN INTEREST AND
3 ASSIGNS:

4 _____
5 By _____
6 Its _____
7 Date _____
8 Address: _____
9 _____
10 _____
11 _____

12 IT IS SO AGREED BY THE DEPARTMENT OF ECOLOGY:

13 _____
14 By _____
15 Its _____
16 Date _____
17 Address: _____
18 _____
19 _____
20 _____

ATTACHMENT F

AQUATIC SEDIMENTS IN LAKE UNION: STUDIES AND REPORTS

Reference to and incorporation of the following list does not constitute a statement regarding the validity, accuracy, or completeness of any of the data contained in such reports or studies.

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1 ATTACHMENT G
2 SEDIMENT CLEANUP

3 The Prospective Purchaser Consent Decree entered between Northlake and Ecology provides
4 that Northlake or its Successors in Interest and Assigns may meet its Payment Obligations by
5 performing Ecology-approved cleanup of sandblast grit and other co-mingled contaminants
6 discharged by past operations at the Property. Such cleanup shall be conducted in accordance with a
7 Cleanup Plan that meets the requirements set forth in this Attachment G. The Cleanup Plan shall be
8 implemented through amendment of the Consent Decree pursuant to Section XIII to incorporate the
9 terms of such Cleanup Plan.

10 Requirements

11 1. Submit a Cleanup study plan that complies with the provisions of WAC 173-204-560
12 to Ecology for review and comment. Ecology's comments shall be addressed and incorporated into
13 the final Cleanup Study Plan. Acting within the Scope of the approved Final Cleanup Study Plan,
14 Northlake or its Successors in Interest and Assigns shall:

15 a. Define the vertical and aerial extent of sandblast grit. Sediments in which
16 chemical values exceed those of ambient Lake Union sediments, and which exhibit a chemical
17 signature characteristic of sandblast grit, will be considered to be within the scope of this Decree.

18 b. Develop a work plan for the cleanup of the sandblast grit that includes a plan
19 for confirmational monitoring and post-cleanup site characterization.

20 c. Submit a Cleanup Study report that complies with the requirements of WAC
21 173-204-560(7) to Ecology.

22 2. Upon approval of the Cleanup Study Report and one or more of the cleanup action
23 alternatives by Ecology, Northlake or its Successors in Interest and Assigns shall obtain all necessary
24 permits and approvals and shall conduct the approved cleanup action alternative(s).

1 3. After completing the cleanup action, Northlake or its Successors in Interest and
2 Assigns shall conduct the confirmational monitoring and site characterization sampling in the
3 approved Cleanup Study report.

4 4. Submit a final report to Ecology containing the results of the post-cleanup sampling.
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